



# FOREIGN AFFAIRS

Published by the Council on Foreign Relations

[Home](#) > [Make No Mistake](#)

Wednesday, November 25, 2015

Make No Mistake

The United States Should Get Its Message Straight in the South China Sea

Mira Rapp-Hooper

MIRA RAPP-HOOPER is Senior Fellow in the Asia Pacific Security Program at the Center for a New American Security.

On October 27, the United States conducted a long-awaited freedom of navigation operation (FONOP) in the [South China Sea](#) <sup>[1]</sup>. During the operation, the USS *Lassen*, an Arleigh Burke-class guided missile destroyer, sailed within 12 nautical miles of Subi Reef—a formerly submerged atoll that China has [built into an artificial island](#) <sup>[2]</sup> to [cement its claim to the area](#) <sup>[3]</sup>.

In the months before the FONOP, the prospective exercise received a great deal of public attention. And in the weeks since, U.S. analysts have puzzled over what message the *Lassen's* passage actually sent, since many of the details remain unclear or undisclosed. “I don’t like in general the idea of commenting on our military operations but I can say [that] what you read in the newspapers is accurate,” [said Secretary of Defense Ashton Carter](#) <sup>[4]</sup>, when pressed by Congress on the particulars of the FONOP.

The *Lassen's* passage was a limited operation meant to put pressure on China’s maritime claims—not a massive display of force designed to convince Beijing to return dredged sand to the floor of the South China Sea. As China continues to build up its artificial islands and to make spurious claims to waters and airspace around them, operations like the *Lassen's* will be crucial to the United States’ policy in the South China Sea, where freedom of navigation is a vital national interest. But defending that interest requires clear messaging, so as it prepares for future FONOPS, the United States should work to shape expectations about the signals they will send, reminding the U.S. public and foreign leaders alike that FONOPS are regular operations with targeted, legal aims.

NOW LET'S BE CLEAR...

The Freedom of Navigation program has existed since 1979, and the U.S. military holds dozens of FONOPS each year, many of them in Asia. Washington generally does not announce FONOPS in advance, nor does it publicly disclose details of the missions after the fact, save for those included in the Pentagon’s annual [Freedom of Navigation report](#) <sup>[5]</sup>. Generally speaking, FONOPS attract little public scrutiny.

Things were different before the *Lassen's* passage around Subi Reef. Nearly six months before the operation, media reports, which were probably the result of unauthorized disclosures, began to suggest that the Pentagon was considering a FONOP in the Spratly

Islands. Over the summer, stories emerged of FONOP-related rifts <sup>[7]</sup> between naval commanders, the White House, and the Pentagon, and congressional Republicans pressed administration officials to explain <sup>[7]</sup> why the operations had not yet taken place. That Washington had not conducted such operations in the Spratlys since 2012 only heightened the drama, and Beijing's continued island buildup left leaders in both parties searching for a firm response.

By the time the *Lassen* sailed through the Spratlys in October, expectations were running high. Although the U.S. government intended to use the operation to reestablish long-standing navigational practices meant to uphold customary international law, the public seemed to expect that the operation would finally demonstrate Washington's resolve to push back against China's assertiveness in the region <sup>[8]</sup> .

The signals that the *Lassen* trip actually sent to China were less ambitious. In legal terms, they were also somewhat murky, particularly with regard to the United States' stance on China's claims to Subi Reef.

Many U.S. analysts, including leading regional experts <sup>[9]</sup> and maritime lawyers <sup>[9]</sup>, expected that the U.S. Navy would instruct the *Lassen* to travel within 12 nautical miles of the artificial island while conducting normal military operations, such as surveillance or search and rescue exercises. Had the *Lassen* done so, it would have signaled that it was not merely engaging in "innocent passage <sup>[10]</sup>"—a principle enshrined in the UN Convention on the Law of the Sea that allows any vessel to peacefully transit another state's territorial waters. By conducting military operations in those waters, the United States would have been making clear that it did not recognize them as China's.

A few days after the operation took place, however, reports emerged that the exercise had been conducted in a manner consistent with innocent passage <sup>[11]</sup> after all the *Lassen's* fire control radars were turned off, for example, and the P- surveillance aircraft that accompanied the ship remained more than 12 nautical miles from the contested reefs. Pentagon officials have declined to elaborate <sup>[12]</sup> on whether the *Lassen* had acted in accordance with innocent passage, sparking concerns that the FONOP had implicitly recognized a territorial sea around Subi Reef—precisely the opposite of what observers expected the mission to do. Some even suggested that the *Lassen* passage was not a FONOP <sup>[13]</sup> at all.

It now seems that the South China Sea's <sup>[14]</sup> geography might explain the *Lassen's* mixed messaging. Subi Reef lies within 12 nautical miles of other islands and reefs that are either held or claimed by the Philippines <sup>[15]</sup> or Vietnam <sup>[16]</sup> , and it is possible that U.S. government lawyers believe that those land features entitle their claimants to territorial waters around them (although the debate on this point continues <sup>[17]</sup>). If that is the case, then the *Lassen's* innocent passage probably did recognize someone's territorial sea—just not China's <sup>[18]</sup> .

The message of the recent FONOP was much clearer in other respects. For one, contrary to international law, Beijing has long claimed that foreign vessels must notify Chinese authorities before they enter Chinese territorial waters, even if they are in innocent passage. The United States <sup>[19]</sup> did not give China such notification before the *Lassen* exercise, thereby challenging China's excessive notification standards. Second, by transiting not only a reef claimed by China but also features claimed by other states, the

*Lassen* signaled that the United States objects to excessive maritime claims in general, not just to China's. This message would carry weight even if the *Lassen* transited vietnamese- or Philippine-claimed waters under innocent passage (whether it did so remains unknown), because it suggests that the United States will likely challenge excessive claims made by such states in the future. Finally, Washington succeeded in conveying the fact that the FONOP had international support Australia [20], apan [21], the Philippines [22], and South orea [23] all made statements endorsing the exercise shortly after it took place.

The administration followed the *Lassen* operation with other strong signals Secretary of Defense Carter toured [24] the USS *Theodore Roosevelt* aircraft carrier in the South China Sea, Obama visited [25] a Philippines Coast Guard vessel at port in Manila and pledged 250 million in new military aid to the region, and American B-52s flew near [2] the Spratly Islands. By the time the *Lassen*'s message was deciphered, however, there was a fair amount of disappointment in the American expert community that the long-awaited exercise had not made a more of a splash.

Officials in Beijing, meanwhile, objected strongly to the operation, which Chinese ships had closely followed without incident. Chinese officials argued that the FONOP was provocative [27] and a violation of Chinese sovereignty [2] , but they generally avoided [11] using meaningful legal terminology to support their opprobrium.

#### LIMITED AIMS, DIRECT MESSAGING

There is no question that the Obama administration [29]'s messaging about the *Lassen*'s passage could have been much clearer, but this particular FONOP also received an unusual amount of scrutiny. That, in turn, created unrealistic expectations for what a cruise by a single vessel could possibly accomplish. U.S. officials have suggested that the October 27 FONOP will be the first of many, conducted as often as twice per quarter [30] in the future, there are several steps that U.S. policymakers should take to ensure that these such operations send more consistent signals.

First, in a return to historic practice, the United States should not give public notice of where or when exercises will be held. If the United States intends to signal that FONOPS are part of the normal course of business [1] of upholding international law in a vital waterway, rather than a major military operation intended to thwart China, the operations should be regular and take place without fanfare. To the same end, the operations should not be delayed or postponed because of regional political events, such as summits or state visits.

Second, in the future, no one should expect the Pentagon to publicly disclose the details of FONOPS, as some policymakers, such as Republican Senator ohn McCain, have suggested [12]. Indeed, as the last few weeks have demonstrated, the precise legal rationales behind FONOPS are often incredibly nuanced, and it can be difficult to communicate them to even the most expert audiences. What is more, the legal details underpinning FONOPS may be relevant to future operations should they be publicly disclosed, they could threaten the security of the U.S. forces performing the exercises. To avoid such concerns, the Obama administration should make clear that it will not issue exhaustive legal readouts after every future operation. Instead, in accordance with historic practice, official reporting on future FONOPS should appear in the Pentagon's annual

Freedom of Navigation report [5], which should explain the nature of the excessive maritime claims that the United States disputes. The Pentagon should also, on a quarterly basis, confirm that the operations are being conducted as promised, acknowledging in general terms the location of the operations and the nature of the excessive claims they intend to contest. The American public should not expect to learn the intricate operational details behind each exercise, and it should not be surprised when top officials do not offer them [11].

Finally, the Obama administration should remind Congress, the American public, and U.S. friends abroad that the primary target of Spratly FONOPS remains the state making excessive maritime or airspace claims (in this case, China), and that the primary purposes of FONOPS are legal and diplomatic rather than military. To this end, it should make clear that such operations often involve the valuable exchange of signals between China [31] and the United States that, like other diplomatic communications, are not made public. The *Lassen*, for example, was in radio communications with the Chinese vessels that trailed it during the FONOP. Did those ships warn the *Lassen* that it was approaching a Chinese “territorial sea” [32] as it neared Subi Reef? Whether China did so has not been disclosed, but one purpose of the *Lassen* operations was to gauge Beijing’s stance on its claims to water and airspace. Even if it was conducted innocently, then, the *Lassen* passage may have collected data of great diplomatic worth in future engagements with China. The same will hold true in future operations the value of a FONOP cannot be judged solely on the basis of those details that are made public.

The United States should seek to return FONOPS to their historic role. They should be designed to send precise legal messages to their intended recipients. By definition, they will not involve overwhelming demonstrations of U.S. military might. Rather, they will be measured reminders that the South China Sea remains part of the global commons governed by international law. As it works to manage the messaging and expectations surrounding future FONOPS, the United States should also continue to encourage regional partners to back these exercises, and to hold similar patrols of their own. Conducted regularly with strong domestic and international support, FONOPS can send the message that U.S. leaders have been articulating for months that “the United States will continue to fly, sail, and operate wherever international law allows.”

Copyright 2015 by the Council on Foreign Relations, Inc.

All rights reserved. To request permission to distribute or reprint this article, please fill out and submit a Permissions Request Form. If you plan to use this article in a coursepack or academic website, visit Copyright Clearance Center to clear permission.

**Source URL:** <https://www.foreignaffairs.com/articles/2015-11-25/make-no-mistake>

#### Links

[1] <https://www.foreignaffairs.com/articles/united-states/2015-10-12/all-good-fon>

[2] <https://www.foreignaffairs.com/articles/china/2014-07-13/pandoras-sandbox>

[3] <https://www.foreignaffairs.com/articles/east-asia/2015-04-09/china-s-island-builders>

[4] <http://news.usni.org/2015/10/27/u-s-south-china-sea-freedom-of-navigation-missions-included-passage-near-vietnamese-philippine-claims>

[5] <http://policy.defense.gov/OSD/Offices/FON.aspx>

[6] <http://www.politico.com/story/2015/07/barack-obama-administration-navy-pentagon-odds-south-china-sea-1205>

[7] <http://www.armed-services.senate.gov/record/2015/07/15a.pdf>

[8] <https://www.foreignaffairs.com/reviews/capsule-review/2014-0-1/asia-s-cauldron-south-china-sea-and>

end-stable-pacific-strategic

[9] <http://pamti.csis.org/the-u-s-asserts-freedom-of-navigation-in-the-south-china-sea>

[10] <http://www.maritime-executive.com/features/Maritime-Security-Private-The-Concept-of-Innocent-Passage>

[11] <http://news.usni.org/2015/11/02/u-s-destroyer-made-an-innocent-passage-near-chinese-south-china-sea-artificial-island-in-recent-mission>

[12] <http://www.newsweek.com/john-mccain-asks-pentagon-publicly-clarify-intent-behind-south-china-sea-393171>

[13] <http://thediplomat.com/2015/11/why-the-us-navys-first-south-china-sea-freedom-wasnt-a-freedom>

[14] <https://www.foreignaffairs.com/reviews/capsule-reviews/south-china-sea-struggle-power-asia>

[15] <https://www.lawfareblog.com/answer-innocent-passage-mystery>

[16] <http://nationalinterest.org/feature/the-us-navy-2009s-freedom-navigation-operation-around-subi-reef-14272>

[17] <https://www.lawfareblog.com/cant-anybody-play-game-us-freedom-operations-and-law-sea>

[18] <http://news.usni.org/2015/11/05/confusion-continues-to-surround-u-s-south-china-sea-freedom-of-navigation-operation>

[19] <https://www.foreignaffairs.com/articles/china/2015-05-20/beware-chinas-grand-strategy>

[20] <http://www.theguardian.com/world/2015/oct/27/australia-strongly-supports-us-activity-in-south-china-sea-says-marise-payne>

[21] <http://www.japantimes.co.jp/news/2015/10/2/world/politics-diplomacy-world/u-s-warship-passage-contested-south-china-sea-gets-abe-nod-sail-past-works>

[22] <http://www.rappler.com/nation/110794-aquino-us-defender-south-china-sea-edca>

[23] <http://www.mofa.go.kr/ENG/press/pressbriefings/index.jsp?menu=1030>

[24] <http://www.defense.gov/News-Article-View/Article/2772/carter-visits-uss-roosevelt-in-south-china-sea>

[25] <http://www.nytimes.com/2015/11/19/world/asia/obama-apec-summit-south-china-sea-philippines.html>

[26] <http://www.reuters.com/article/2015/11/13/us-southchinasea-usa-idUSCN0T12G720151113>

[27] <http://freebeacon.com/national-security/destroyer-passage-in-south-china-sea-prompts-beijing-warnings>

[28] <http://thediplomat.com/2015/10/us-freedom-of-navigation-patrols-in-the-south-china-sea-china-reacts>

[29] <https://www.foreignaffairs.com/articles/asia/obama-and-asia>

[30] <http://www.ibtimes.com/south-china-sea-us-conduct-two-patrols-every-quarter-press-freedom-navigation-21075>

[31] <https://www.foreignaffairs.com/articles/asia/2015-04-20/real-challenge-pacific>

[32] <http://www.dailymail.co.uk/wires/article-3294727/China-Will-respond-US-ships-necessary-means.html>